

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:10-CR-00074-F-1

UNITED STATES OF AMERICA

v.

DOMINIQUE ALEXANDER JONES,
Defendant.

)
)
)
)
)
)

ORDER

This matter is before the court on Dominique Alexander Jones' Motion for Relief From Judgment [DE-114]. Jones asks this court to set aside his judgment. *Id.* at 1. The relief Jones is seeking is identical to the relief he could obtain through a successful § 2255, and for this reason, the court will treat Jones' Motion for Relief From Judgment as a motion brought pursuant to 28 U.S.C. § 2255. *See United States v. Winestock*, 340 F.3d 200, 207 (4th Cir. 2003) (holding that "a motion directly attacking the prisoner's conviction or sentence will usually amount to a successive application.")

A review of the record reveals that Jones previously filed a § 2255 motion that was resolved on the merits. *See* [DE-71]. Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." In this case, Jones must first obtain an order from the Fourth Circuit Court of Appeals before this court will consider any successive petition under 28 U.S.C. § 2255.

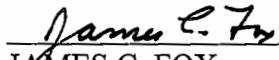
In light of the foregoing, Jones' pending motion [DE-114] is DISMISSED without prejudice to him to seek authorization from the Fourth Circuit Court of Appeals.

Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, the court

declines to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2) (A certificate of appealability will not issue unless there has been “a substantial showing of the denial of a constitutional right.”); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (Where a court has rejected the constitutional claims on their merits, a petitioner must demonstrate that reasonable jurists would find that the court’s assessment of the constitutional claims is debatable or wrong, but when a court denies relief on procedural grounds, the petitioner must demonstrate that jurists of reason would find it debatable whether the court’s procedural ruling was correct.).

SO ORDERED.

This the 26 day of October, 2016.



JAMES C. FOX
Senior United States District Judge